



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Approve Concept Application and Plan for Pepsi Playground Grant at Legion Park

MEETING DATE: September 4, 1991

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council approve the Concept Application/Plan for a Pepsi-Cola Playground Grant for Legion Park.

BACKGROUND INFORMATION: First of all, please review the information, grant and agreement we would enter into if you accept this recommendation. (See attached exhibit).

This is not a given grant. We will be competing against other communities and agencies for the Pepsi Cola playground equipment. Other issues and responsibilities that would need to be considered if we proceed are as follows:

1. We need to hire a consultant to design the area (approximately \$2,000.00).
2. We need to construct an entire new playground surface area -- meaning construction documents, bid process, physical new construction of the play area, curbs, benches, and designated equipment areas and the like (estimated cost approximately \$5,000.00 to \$10,000.00, depending on how elaborate we go). There could be some possible service club assistance here but let's not count on them at this point.
3. The above would all have to be completed by March 1, 1992, in order to comply with the Pepsi Cola agreement for installation.

I see this facility, with the new equipment and improved surface area, as the next Emerson Park, in a high-use area with a tremendous user impact.

Please give this consideration and direct as to how we proceed.

FUNDING: Capital Outlay Reserve

Ron Williamson
Parks and Recreation Director

RW:srb - Attachments

APPROVED: _____

THOMAS A. PETERSON
City Manager





Let's build a Pepsi Playpark!

August 5, 1991

Dear Park Director:

We are pleased to announce that the highly successful Pepsi Playpark program is coming to Northern California and Reno. The Pepsi-Cola Company is committed to building 10 Pepsi Playparks in these areas and each park selected will receive over \$15,000.00 worth of Iron Mountain Forge play equipment.

We're inviting your Park to be considered for new Iron Mountain Forge equipment. Please note that the application includes a contract. To expedite the Pepsi Playpark project, please have your legal department review and select the insurance paragraph (either 3.1 or 3.11 in the contract) which applies to your area. Complete, sign, and return to Pepsi with your application by September 30, 1991. This ensures that the Park selections can be completed in a timely manner so more children can enjoy the Pepsi Playparks sooner! Sites will be selected by an independent panel of judges. The selected parks will be notified by mail by October 10, 1991. Good luck!

Thank you in advance for your sincere interest and support of the "Let's Build a Pepsi Playpark" program.

Sincerely,

David N. Rich

David Rich
Associate Marketing Manager
Pepsi-Cola West

1-(800) 342-2098 Ext 293

JOE CALK Pepsi Playground Coordinator
1-(415) 621-7835 (SF office)

1991 PEPSI PLAYPARK APPLICATION

Name of Park Agency Lodi Parks and Recreation DepartmentName of Governing City or County City of LodiAddress 221 W. Pine St., City Hall
Lodi, CA 95240Contact Name Ron Williamson,Title Director Parks & RecreationAddress Lodi Parks and Recreation Department
125 N. Stockton St., Lodi, CA 95240Phone: (209) 333-6742 Fax: (209) 333-6795

Park sites proposed for Pepsi Playparks (no more than three). Please include a photograph of proposed sites.

Name Legion ParkAddress 835 S. Hutchins St.
Lodi, CA 95240Major Cross Streets Hutchins and Vine Streets
Size 6.0 acresName _____
Address _____Major Cross Streets _____
Size _____Name _____
Address _____Major Cross Streets _____
Size _____

A. Park Use and Characteristics

Please provide the following for **EACH** park proposed for a Pepsi Playpark:

Is the suggested site a new or an existing playground? Existing/needs to
be rehabilitated

Size of new/existing playpit area? 14,000 sq. ft.

How large an area does the park serve? 1/2 mile
 X 1 mile
 1 1/2-3 miles
 3 - 5 miles
 over 5 miles

Total population within service radius? 5,000

Estimated percentage of use by household income:

40% < \$20,000 40% \$20,000+ 20% \$30,000+ 0% \$40,000+

Describe location and existing equipment condition (if applicable) and briefly explain why your park needs new playground facilities. Use extra sheets if necessary.

LEGION PARK is located at the intersection of Hutchins/Vine Streets. The existing equipment is old, single unit pieces that date back to 1950's. The area where equipment would go needs to be redesigned, which the city would take care of. We will try to get service club involvement to redo the existing ground area, install new curb and borders, and prepare the grounds for the Pepsi equipment. We will apply the January 1, 1992 standards to answer handicap requirements. We need to address play needs, group relations-type equipment, and to update our equipment and grounds and meet safety standards.

Please describe your summer playground program for children.

The City of Lodi Parks and Recreation Dept. runs six (6) playground sites at sites. Our attendance daily is approximately 300+. It is offered to the public free of charge - 2:30-6:00 p.m. It serves unofficially as a form of child care program and runs 325 out of the year. Our City/School District is on year-round school so all schools/city facilities are in constant use. The City of Lodi finances the program with no financial assistance from any form of grant or parental assessments.

B. Acknowledgement of Eligibility Requirements

The Pepsi Playpark program is a unique public/private partnership. Pepsi will be donating over \$15,000.00 worth of Iron Mountain Forge play equipment to each selected Pepsi Playpark. As such, Pepsi can only donate to parks which will:

- Maintain Playpark equipment and ground cover surface *once* installation is complete.
- Provide personnel and support for public relations activities.
 - A) Park officials for ground breaking and park dedication.
 - B) Authorization for Pepsi banners and other signage.
 - C) Tables for possible product sampling.
 - D) Support for summer safety program at Pepsi Playparks.
 - E) Audio equipment and facility for ground-breaking ceremony.
- Provide liaison with local legislators and community leaders.
- Provide designer to coordinate installation of equipment with Iron Mountain Forge.
- Agree to permanent placement of graffiti-resistant Pepsi Playpark sign 3 1/2 ft. by 2 1/2 ft. in Pepsi Playpark. See contract Exhibit A.
- Provide funds for ground preparations, playground installation, ground cover, and maintenance of equipment and ground surface to meet Consumer Product Safety Guidelines. (All Parks and Recreation Departments are encouraged to create proper handicap accessibility to play areas.)
- Have all infrastructure ready for Playpark installation to be complete by March 1, 1992.
- Agree to terms of attached contract including terms for installations, insurance (choose either 31 or 311) etc., as written.

Park Director Signature

City/County Attorney Signature

Date of Signature

Date of Signature

Mail completed application and signed contract by September 30, 1991 to:

Pepsi Playpark, 30 Van Ness, 4th Floor, San Francisco, CA 94102

Any concerns or questions should be sent in writing to the same address.

PEPSI PLAYPARK AGREEMENT

This agreement is entered into as of the _____ day of _____, 199_, between Pepsi-Cola Company, a division of PepsiCo, Inc. ("Pepsi") and the City/Town of _____ located in the State of California (the "City/Town") regarding the construction and installation of a children's playground in the City/Town (the "Playpark") with the support of Pepsi as hereafter set forth. All of the **rights and** benefits inuring to Pepsi hereunder shall also inure to the licensed Pepsi-Cola bottler who services the territory in which the City/Town is located (the "Bottler").

A. CONSTRUCTION OF PLAYGROUND

1. Designation of Area

The City/Town **shall**, in consultation with Pepsi and its local Bottler, purchase or designate a parcel **of** land appropriate for construction and installation **of** the Playpark and shall prepare the designated site for construction of the Playpark.

2. Contracting with Builder: Equipment Supplier

The City/Town agrees to accept the play equipment from Pepsi through Iron Mountain Forge playground supplier and will go to competitive bid or itself arrange for the construction of the Playpark and the installation of the playground equipment. The Town represents and warrants to Pepsi that:

a) it will take all steps necessary to assure that the Playpark will be designed, manufactured and installed in compliance **with** any and all applicable federal, state and local laws, rules, regulations **and** ordinances.

b) any contracts with the builder and equipment supplier for the Playpark will include the following provisions, **as** appropriate: (i) any equipment supplier shall provide proof that its equipment complies **with** the Consumer Product Safety Commission Guidelines **for** playground equipment, (ii) any equipment shall provide a certificate **of** insurance evidencing product liability insurance, general liability insurance and completed operations insurance, which insurance **shall** in all cases be in amount not less than \$2,000,000 combined single limit covering bodily **injury** and

b) cont.

property damage from an insurer duly licensed in the state in which the equipment will be installed and the certificates shall specifically name both the City/Town and Pepsi as additional insureds: (iii) if equipment is to be provided by means other than through commercial manufacturer, the designer and/or engineer shall be duly licensed in the state in which the equipment will be installed and such parties shall provide a certificate of errors and omissions professional liability insurance in an amount not less than \$1,000,000 which specifically names both the City/Town and Pepsi as additional insureds; and (iv) any equipment supplier and/or designers shall provide certification that the installation of the equipment at the Playpark has been completed in conformance with the specifications of its contract with the City/Town; and

c) that the equipment installed in the Playpark has been installed over a protective fall cushion which is in compliance with the Consumer Product Safety Commission Guidelines, which include the requirement that washed sand, pea gravel, wood or mulch chips in at least a depth of 12 inches be provided or that a 1.75 inch rubber mat be provided.

3.I. Insurance

With respect to the Playpark, the City/Town shall procure and maintain at its sole cost and expense the following insurance coverage::

(i) Worker's Compensation, per statutory limits; (ii) **Employer's Liability Insurance** with limits of at least \$1,000,000 per occurrence; and (iii) **Comprehensive General Liability Insurance** including public liability insurance, contractual liability, products liability and completed operations coverage with respect to the Playpark and this Agreement. each with limits of at least \$2,000,000 combined single limit covering bodily injury and property damage. Each such policy shall name Pepsi as an additional insured. The City/Town shall deliver certificates evidencing such insurance to Pepsi within 30 days following the execution of this Agreement and, from time to time, upon Pepsi's request, shall promptly furnish evidence of the maintenance of such insurance. All of the foregoing certificates of insurance furnished by the City/Town shall contain a clause stating that Pepsi-Cola Company is to be notified in writing at least 60 days prior to cancellation of, or any material change in, the policy.

OR

3.II Insurance

The City/Town represents and warrants to Pepsi that it is self insured with respect to the liabilities which it may incur pursuant to Paragraph 4 hereof and that, to the best of its knowledge, it **will** be in a financial position to meet such potential liabilities when they occur.

4. Idemnification

The City/Town agrees to indemnify and hold Pepsi and its respective Bottler harmless from and against any and all claims, demands, actions, losses, liabilities damages, costs and expenses (including reasonable legal fees and expenses) arising out of: (i) any acts, whether of omission or commission that may **be** committed or suffered **by the** City/Town or any of its employees, agents or sub-contractors in connection with the performance or failure to perform any obligations under this Agreement, or otherwise in connection with the design, manufacture, installation, or use of the **Playpark**; (ii) the breach or-alleged breach **by the City/Town or by** any of its employees, agents or sub-contractors of any of its agreements, undertakings, covenants, representations or warranties, express or implied, contained in **this** Agreement; or (iii) **any** action, claim or proceeding which **may** be made by anyone for injuries, including death to persons or damage to property, or otherwise made in connection with the use of **the** Playpark. The City/Town agrees to **defend** Pepsi and/or its Bottler **upon** its request against any such liability, claim, action or demand. Pepsi agrees to notify the City/Town promptly of any written claims or demands against Pepsi and/or its Bottler for which the **City/Town** is responsible hereunder. The provisions of this paragraph and the obligations of the **City/Town** hereunder shall survive indefinitely the expiration or termination of this **A**greement.

B. PEPSI'S OBLIGATIONS A X) RIGHTS

1. Consideration

Pepsi hereby agrees it will pay to Iron Mountain Forge the amount of _____ Dollars (\$ _____) to assist in funding the cost of designing, manufacturing, constructing and installing the Playpark. Said payment shall be made within thirty (30) days following execution of this agreement or at such later time as the parties shall mutually agree.

2. Promotional Rights

Pepsi and its respective Bottler shall have the right to conduct an advertising, consumer promotion and public relation campaign in connection with the Playpark and Pepsi's participation in the development thereof. The City/Town hereby agrees that Pepsi and/or its respective Bottler may **use** the City's/Town's name in connection with such campaigns, and that the City/Town will assist and support Pepsi with respect to such advertising and promotional activities in any manner which may **reasonably be** requested by Pepsi. The parties specifically acknowledge that Pepsi and/or its respective Bottler shall have the right, but not the obligation, to use the following media in conjunction with its advertising and promotional campaign: television commercials; television tags; radio commercials; point of sale materials to be disseminated to retail accounts of Pepsi; newspaper advertisements; press releases and press conferences, and such other forms of publicity as Pepsi shall determine are appropriate.

3. Playpark Sign

The City/Town shall authorize Pepsi **to** prominently place a plaque in the Playpark designating the area as a "Pepsi Playpark". **A** full description and artist's rendering of said plaque as well **as** its manner of installation is attached hereto as Exhibit "**A**".

4. Exclusivity

The City/Town shall not grant any sponsorship or promotion rights with respect to the planning, construction, dedication or operation of the Playpark to any parties (other than Pegsi and its Bottlers) without the prior consent of Pepsi.

C MISCELLANEOUS

1. It is agreed that, from and after the date hereof. (a) the City/Town shall be the sole and exclusive owner of all right, title and interest in and to the Playpark and the design thereof; and (b) Pepsi shall be the sole and exclusive owner of ail right, title and interest in and to all of the materials created in connection with Pepsi's activities as described in Paragraph (B) (2) hereof, including, without limitation, all advertising, promotional publicity and other materials of any kind whatsoever created in connection therewith or relating thereto.
2. Each party hereto agrees that it shall not in any manner ^{OR} of form (including, but not limited to, in any business activity, product endorsement, catalog, advertising, publicity or promotion) use or employ any name, or any service mark, trademark, logo, symbol, design, corporate title or any other names associated with any other party ^{party hereto without such other parties} prior written consent, except pursuant to this Agreement.
 ^{NU} _{8.23.91} ^{per phone call Joe Call (SF) OFFICE}
3. The failure be any party hereto to enforce at any time any one or more of the terms or conditions of this Agreement shall not be considered a waiver of such terms or conditions or of such party's right thereafter to enforce each term and condition of this Agreement.
4. Neither party hereto shall assign this Agreement in whole or in part, or any of their respective rights or obligations hereunder, without the prior written consent of the other.
5. This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective successors and permitted assigns.

6. This Agreement has been made, will be performed and shall be construed in accordance with the laws of the State of California. Any controversy or claim arising out of or relating to this Agreement including, without limitation, the interpretation or the breach thereof, shall be settled by arbitration in the State of California in accordance with the Commercial Arbitration Rules of the American Arbitration Association then obtaining, and judgement upon the award rendered by the panel of three (3) arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, this Agreement to arbitrate shall not bar any party from seeking temporary or provisional remedies in any court having jurisdiction thereof.
7. This Agreement may not be changed, modified or terminated, except in writing signed by all of the parties hereto. This Agreement constitutes and contains the entire understanding among the parties with respect to this subject matter and supersedes any prior or contemporaneous agreement relating thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

PEPSI-COLA COMPANY, a division of
PepsiCo, Inc.

By: _____

Title: _____

(Name of Contracting Municipal Entity)

By: _____

Title: _____

EXHIBIT A

Plaque Specifications

The sign will be made of porcelain enameling on stainless steel. They **will** be supported on each **side by** two posts **5"** in diameter. The posts are made **of galvanized** steel pipe with an electrostatically applied blue **dry** powder finish. (Basically the Iron Mountain Forge **Equipment**.)

The signs are **3 1/2 feet** high by **2 1/2 feet wide** and are **2 1/2 feet** off the ground. The total overall height **is 6 feet** installed (per diagram). **Also**, the plaque **will** be framed so as not to leave any pointed or jagged edges. **The** posts will be reinforced with concrete with specific mowing strip consistent with Department specifications (8" beyond post area).

The plaque will read: This Pepsi Playpark **was** designed and built **by** the Pepsi-Cola Company and (appropriate Dept. of Park and Recreation) with the help and support of this community. March 1992.



